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August 11, 2006

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## By E-File and Hand Delivery

Honorable Sue L. Robinson  
United States District Court  
J. Caleb Boggs Federal Building  
844 King Street  
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Wilmington, DE 19801

**Re: Howard Hess Dental Labs. Inc., et al. v. Dentsply Internat'l, Inc., C.A. No. 99-255 (SLR), and Jersey Dental Labs., et al. v. Dentsply Internat'l, Inc., C.A. No. 01-267 (SLR)**

Dear Chief Judge Robinson:

Plaintiffs respectfully submit this letter to facilitate the conference scheduled for August 16, 2006, by providing Your Honor with Plaintiffs' view of the open issues in these two related cases, as presented to me by Lead Counsel for Plaintiffs and the Putative Class, who, with Your Honor's permission, will address the Court on behalf of Plaintiffs in the August 16, 2006 conference.

## Background

As Your Honor knows, *Hess* involves only one defendant—Dentsply. *Jersey Dental* involves twenty-three defendants, including Dentsply and twenty-two of Dentsply's dealers (originally, twenty-six dealers were named as defendants, but four have been dismissed, pursuant to stipulations between Plaintiffs and each of those four defendants).

By Order, dated January 22, 2004, Your Honor stayed both cases, pending the outcome of Plaintiffs' appeal of your decisions, in *both cases*, that denied Plaintiffs standing to recover damages from Dentsply for its *exclusive dealing/monopoly maintenance*, and your decision in *Jersey Dental* that denied Plaintiffs standing to recover damages from Dentsply for its alleged *vertical, retail price-fixing*.

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On September 21, 2005, the Third Circuit issued its decision on the appeal, holding that Plaintiffs in both cases *do not* have standing to recover damages from Dentsply for its exclusive dealing/monopoly maintenance, but that, in *Jersey Dental*, Plaintiffs *do* have standing to recover damages from Dentsply for its alleged vertical, retail price-fixing.

Plaintiffs' standing to recover damages from the *other defendants*, whether regarding the alleged exclusive dealing/monopoly maintenance conspiracy *or* the alleged vertical, retail price-fixing conspiracy has never been in dispute.

Also, as Your Honor will recall, Your Honor's decision in *Hess* explicitly reserved judgment regarding whether Plaintiffs may move to obtain an injunction against Dentsply regarding its exclusive dealing monopoly/maintenance. *See United States v. Dentsply Int'l, Inc.*, 2001 WL 624807 at\*13 (D. Del. 2001); D.I.#181, at 32-33, 44.

Meanwhile, in the parallel case against Dentsply brought by the Department of Justice, on February 24, 2005, the Third Circuit held Dentsply liable for the same exclusive dealing/monopoly maintenance conduct alleged by Plaintiffs in both cases herein.

**Plaintiffs' Request to Move for Summary Judgment  
On Certain Issues and Proceed with Discovery on Other Issues**

Plaintiffs request that the stays be lifted so that Plaintiffs may proceed with the following:

**First**, in *Hess*, Plaintiffs request to proceed with a motion for summary judgment granting Plaintiffs an injunction and related relief, based on the fact that, in the government's case, Dentsply has already been found liable for the violation alleged by *Hess* plaintiffs. *See New York v. Julius Nasso Concrete Corp.*, 202 F.3d 82, 86 (2d Cir. 2000) (affirming summary judgment establishing defendant's antitrust liability, based on collateral estoppel). The fact that the Government has already obtained an injunction is no bar to Plaintiffs obtaining a somewhat similar injunction as well, given that, under U.S. Supreme Court precedent, private and Government injunctive relief are remedies that were "designed to be

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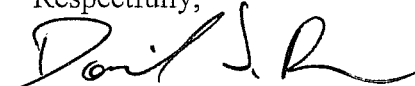
cumulative, not mutually exclusive.” *United States v. Borden Co.*, 347 U.S. 514, 518 (1954). We understand that Dentsply has a different position from ours regarding this issue, so briefing will be necessary.

**Second**, in *Jersey Dental*, Plaintiffs are considering making a motion for summary judgment holding that Dentsply is bound by Your Honor’s holding in the Government’s case that “Dentsply and its dealers consider Dealer Criterion 6 to be an agreement between them.” *United States v. Dentsply Int’l, Inc.*, 277 F. Supp. 2d 387, 450 (D. Del. 2003).

**Third**, in *Jersey Dental*, Plaintiffs would like to commence discovery regarding both the merits and class certification issues, with the merits discovery tailored to the alleged vertical, retail price-fixing conspiracy and the dealer defendants’ liability for the alleged exclusive dealing/monopoly maintenance conspiracy. As Your Honor may recall, the largest five or six dealer defendants are responsible for the large majority of sales of Dentsply teeth by the dealer defendants. Therefore, Plaintiffs would initially take discovery only from those five or six dealers, and would voluntarily postpone discovery against the other defendants for several months. We think that this would ultimately be more efficient, as Plaintiffs would obtain the best review of the merits in the shortest possible time period, rather than simultaneously taking similar discovery against all twenty-three defendants.

**Fourth:** A number of the dealer defendants previously made jurisdictional motions that are currently subject to Your Honor’s stay. Plaintiffs intend to bring suit against each such jurisdictional movant in its home jurisdiction, and then request that the Multidistrict Litigation Panel transfer such cases to Your Honor for consolidation. Therefore Your Honor may find it advantageous to temporarily leave in place the stay against those jurisdictional motions. If the jurisdictional motions are allowed to now go forward, Plaintiffs request that they be put on a briefing schedule separate from the schedule for Plaintiffs motions for summary judgment.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel J. Brown", written in a cursive style.

Daniel J. Brown (#4688)

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DJB/ald

cc: Clerk of the Court (by e-file)

All Defendants by attached service list

(Delaware Counsel by hand)

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